

(ORDER LIST 12 U.S.)

TUESDAY, NOVEMBER 21, 2023

CERTIORARI GRANTED

12-02 MORTALITY, FEAR V. UNITED STATES

The petition for a writ of certiorari is granted.

SOTOMAYOR, J., concurring

SUPREME COURT OF THE UNITED STATES

FEAR MORTALITY *v.* UNITED STATES OF AMERICA

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES DISTRICT COURT TO THE DISTRICT OF COLUMBIA**

No. 12-02. Decided November 21, 2023

The petition for a writ of certiorari is granted.

JUSTICE SOTOMAYOR, with whom JUSTICE NISHIMOTO joins,
concurring in the grant of certiorari.

A judge is required to “disqualify himself in any proceedings in which his impartiality might reasonably be questioned.” 28 U. S. C. § 455(a). An individual has the right to due process under the Fourteenth Amendment of the United States Constitution, which guarantees that a defendant has a fair process in a court of law. Part of protecting an individual from this right is by evaluating whether a judge assigned to the individual's case holds any type of bias that may affect the outcome of a case in the lower courts. Failure to uphold an individual's right to due process by not even evaluating the request for a recusal can deprive the individual of his right to a just and fair process in a court of law. It is imperative that this court reviews this case and temporarily halts any proceedings until we reach a decision on this matter.

SUPREME COURT OF THE UNITED STATES**FEAR MORTALITY *v.* UNITED STATES OF AMERICA****ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
DISTRICT COURT TO THE DISTRICT OF COLUMBIA**

No. 12-02. Decided November 21, 2023

The petition for a writ of certiorari is granted.

JUSTICE STEVENS, with whom THE CHIEF JUSTICE (REHNQUIST) joins, dissenting from the grant of certiorari.

Today, the Court grants a lackluster writ of certiorari that does nothing more than regurgitate precedent, rather than applying it to the facts at hand. Indeed, such a writ is purely “discretionary” and it “is often denied where the power to issue it is unquestionable.” *Hyde v. Shine*, 199 U.S. 62, 85 (1905). The move adopted by this Court is entirely unprecedented and the reasons supporting the grant of certiorari are far more disappointing.

First, I do not believe that the Petitioner has adequately demonstrated that his situation has “compelling reasons” that would push us in favor of granting certiorari, rather we have repeatedly stated that “[r]eview on a writ of certiorari is not a matter of right.” Sup. Ct. R. 10. In fact, it appears that the Petitioner has merely recited this Court’s past opinion verbatim without any citation or accreditation. Cf. Pet. for Cert. 6-8 with *AlexJCabot v. United States District Court ex rel. Falsur*, 1 U.S. 9, 13-15 (2021).

It is also true that we do not nearly receive the amount of caseload that our real-life counterpart does. See, e.g., *Hubbard v. United States*, 514 U.S. 695 (1995) (as of 1995, the Court received roughly “7,000 petitions for certiorari every Term”). Despite this, we cannot possibly be expected to accept and hear every appeal. That would controvert the principle and purpose of this Court. Following such a philosophy would reduce the District Court from a court of law to one merely of suggestion.

Second, I believe that the reasons for granting certiorari lack any factual basis and it is not supported by any of our precedent. It does not conform to the general criteria for granting certiorari and it is reckless to grant a case without any demonstration of wrongdoing on the part of the lower court. When reviewing a case from the lower court, we have established that “decisions on questions of law are reviewable *de novo*, decisions on questions of fact are reviewable for clear error, and decisions on matters of discretion are reviewable for abuse of discretion.” *Highmark Inc. v. Allcare Health Management System, Inc.*, 572 U.S. 559, 563 (2014) (internal quotation marks omitted); see also *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). The standard of review, adopted by an appellate court, can often be critical to the

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outcome of a case. See *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999) (“The upshot in terms of judicial review is some practical difference in outcome depending upon which standard is used”). Not only should a litigant approach this Court with a standard of review in mind, but they must also demonstrate how the facts and questions warrant that specific standard. When certain standards of review are warranted, like review *de novo*, “no form of appellate deference is acceptable.” *Salve Regina College v. Russell*, 499 U.S. 225, 238 (1991). By reading this Court’s decision back to ourselves we receive little to no insight as to how the holding applies to the facts as presented by the Petitioner.

For questions regarding recusal, there are two standards under which recusal can be seen as mandated: (1) under the Due Process Clause as we iterated in *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009) and *Withrow v. Larkin*, 421 U.S. 35 (1975); or (2) under “statute, or the professional standards of the bench and bar.” *Bracy v. Gramley*, 520 U.S. 899, 904 (1997); see, e.g., 28 U.S.C. §144; see also ABA Annotated Model Code of Judicial Conduct, Canon 2 (2004). Petitioner’s strategy is akin to throwing things at a wall and seeing what sticks. The only domain containing any facts that would be subject to review by this Court would be in the statement of the case. Pet. for Cert. 4. Petitioner contends that “the presiding judge was fired from the United States Secret Service by the hand of the Petitioner while the Petitioner was Director of said agency.” *Ibid.* However, the Petitioner has failed to apply this Court’s holdings to the statement; there must be some attempt to identify a logical nexus between the two elements in order to warrant any form of judicial review. Whereas this writ of certiorari lacks that vital aspect, it ought to be denied.

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Because this Court fails to conform to the general practices of granting certiorari, I respectfully dissent.